

The federal excise tax on diesel fuel, imposed at the producer, importer or manufacturer level, is properly included in the selling price of the fuel for Illinois Retailers' Occupation Tax calculation purposes. See 86 Ill. Adm. Code 130.445. (This is a GIL).

June 30, 2000

Dear Xxxxx:

This letter is in response to your letter dated May 19, 2000 which was received in our office on June 9, 2000. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department, 2 Ill. Adm. Code 1200.120(b) and (c), which can be found at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

I am writing this in behalf of COMPANY sales & use tax number #####. COMPANY is an interstate carrier of passenger & light express and our fleet of buses are diesel powered. We currently are purchasing diesel fuel in bulk from various suppliers in the State of Illinois. When we make these purchases from our suppliers we are currently paying sales tax to the vendor on the diesel purchase. The sales tax is being computed on the cost of the diesel and the federal excise tax of .244 a gallon. My first question is should COMPANY be paying sales tax on the federal tax. I your answer is yes, I would like another opinion on the Federal Excise Tax. COMPANY is an interstate carrier an is exempt from .17 per gallon of federal diesel tax. We are currently purchasing the clear diesel, which has the .244 per gallon of tax in it. We would prefer to purchase the dyed fuel, however not all of our suppliers can furnish the dyed fuel. To eliminate mixing dyed and clear fuel COMPANY has been paying the .244 and filing for a refund of .17 per gallon. My question on this issue is if indeed we do owe the sales tax on the purchase of diesel and federal tax, is there a way to get a refund of the sales tax on the .17 per gallon that we are exempt from. I would very much appreciate an answer on this as I have made numerous phone calls on this issue and have been given conflicting answers and to say the least, I am somewhat confused.

If you need to contact me my telephone number is #####.

Please be advised that the basis of the Retailers' Occupation Tax (sales tax) liability calculation is the gross receipts received by the retailer for retail sales of tangible personal property. The retailer's costs of doing business are never deductible from those gross receipts. See 86 Ill. Adm. Code 130.410, enclosed.

Federal taxes are not deductible from gross receipts for purposes of calculating sales tax when the incidence of the tax falls upon the manufacturers, wholesalers, or importers. Please refer to 86 Ill.

Adm. Code 130.445, enclosed. Accordingly, the federal excise taxes on gasoline and diesel are not deductible because their legal incidence falls upon the manufacturers, wholesalers, or importers rather than upon the customers or end users. As such, they are costs of doing business that are never deductible.

You ask if there is a way for you to get a refund of the sales tax on the federal tax that you pay for fuel that is not dyed. Please refer to 86 Ill. Adm. Code 130.1501, enclosed, which explains that sales taxes that are erroneously paid can only be recovered by the person who has borne the burden of the erroneously paid tax. In your case that person would be your supplier. However, in the situation you describe the tax was not erroneously paid because, as discussed above, it was a valid component of the selling price of the fuel that was subject to Illinois sales tax when sold. The Illinois Retailers' Occupation Tax was thus correctly applied to the federal excise tax. The fact that you are later able to obtain a refund of the federal tax does not make the original imposition of that federal tax an invalid element of the selling price of the fuel that was subject to Illinois Retailers' Occupation Tax. As such, Illinois could not give you a refund or credit for that portion of the Illinois Retailers' Occupation Tax that represents the tax paid on the federal excise tax.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Karl W. Betz
Associate Counsel

KWB:msk
Enc.